

109TH CONGRESS
2D SESSION

S. 4089

To modernize and expand the reporting requirements relating to child pornography, to expand cooperation in combating child pornography, to require convicted sex offenders to register online identifiers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2006

Mr. MCCAIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To modernize and expand the reporting requirements relating to child pornography, to expand cooperation in combating child pornography, to require convicted sex offenders to register online identifiers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop the Online Ex-
5 ploitation of Our Children Act of 2006”.

1 **SEC. 2. AMENDMENT OF REPORTING REQUIREMENTS.**

2 (a) IN GENERAL.—Chapter 110 of title 18, United
3 States Code, is amended by inserting after section 2257
4 the following:

5 **“§ 2257A. Obligation to report child pornography by**
6 **online service providers**

7 “(a) DEFINITIONS.—

8 “(1) IN GENERAL.—In this section, section
9 2257B, and section 2257C—

10 “(A) the terms ‘attorney for the govern-
11 ment’ and ‘State’ have the meanings given
12 those terms in rule 1 of the Federal Rules of
13 Criminal Procedure.

14 “(B) the term ‘electronic communication
15 service’ has the meaning given that term in sec-
16 tion 2510;

17 “(C) the term ‘Internet’ has the meaning
18 given that term in section 231(e) of the Com-
19 munications Act of 1934 (47 U.S.C. 231(e));

20 “(D) the term ‘online service’ includes
21 any—

22 “(i) Internet content hosting service;

23 “(ii) domain name registration serv-
24 ice;

25 “(iii) Internet search service;

1 “(iv) Internet social networking site,
 2 chat room, message board, or any other
 3 similar service using the Internet;

4 “(v) Internet service that provides e-
 5 mail, instant messaging, or any other simi-
 6 lar service using the Internet;

7 “(vi) electronic communication serv-
 8 ice;

9 “(vii) Internet service provider (in-
 10 cluding any wireless carrier that provides
 11 Internet access);

12 “(viii) Internet image or video sharing
 13 service; and

14 “(ix) remote computing service; and

15 “(E) the term ‘remote computing service’
 16 has the meaning given that term in section
 17 2711.

18 “(2) CONSTRUCTION.—The inclusion of any
 19 type of service in the list under paragraph (1)(D)
 20 may not be construed to mean that such type of
 21 service is not an electronic communication service or
 22 a remote computing service.

23 “(b) DUTY TO REPORT.—

24 “(1) IN GENERAL.—Whoever, while engaged in
 25 providing an online service to the public through a

1 facility or means of interstate or foreign commerce,
 2 obtains actual knowledge of any facts or cir-
 3 cumstances described in paragraph (2) shall, as soon
 4 as reasonably possible, make a report of such facts
 5 or circumstances to the CyberTipline of the National
 6 Center for Missing and Exploited Children, or any
 7 successor to the CyberTipline operated by such cen-
 8 ter.

9 “(2) FACTS OR CIRCUMSTANCES.—The facts or
 10 circumstances described in this paragraph are any
 11 facts or circumstances that appear to indicate a vio-
 12 lation of—

13 “(A) section 2251, 2251A, 2252, 2252A,
 14 2252B, or 2260 that involves child pornography
 15 or;

16 “(B) section 1466A.

17 “(c) CONTENTS OF REPORT.—

18 “(1) IN GENERAL.—To the extent available to
 19 an online service provider, each report under sub-
 20 section (b)(1) shall include the following informa-
 21 tion:

22 “(A) INFORMATION ABOUT THE INVOLVED
 23 INDIVIDUAL.—Information relating to the
 24 Internet identity of any individual who appears
 25 to have violated a Federal law in the manner

described in subsection (b)(2), including the screen name, user identification name, e-mail address, website address, and uniform resource locator.

“(B) HISTORICAL REFERENCE.—Information relating to when any apparent child pornography was uploaded, transmitted, reported to, or discovered by the online service provider, including a date and time stamp and time zone.

“(C) GEOGRAPHIC LOCATION INFORMATION.—Information relating to the geographic location of the involved individual, hosting website, or uniform resource locator, including the street address, telephone number, area code, zip code, and any Internet Protocol address.

“(D) IMAGES OF APPARENT CHILD PORNOGRAPHY.—Any image of any apparent child pornography relating to the incident such report is regarding.

“(E) COMPANY CONTACT INFORMATION.—Accurate contact information for the online service provider making the report, including the address, telephone number, facsimile num-

1 ber, e-mail address of, and individual point of
2 contact for, such online service provider.

3 “(2) ADDITIONAL INFORMATION.—

4 “(A) IN GENERAL.—A report under sub-
5 section (b)(1) may include information or mate-
6 rial developed or discovered by an online service
7 provider, in addition to the information re-
8 quired under paragraph (1) of this subsection.

9 “(B) NOT REQUIRED.—An online service
10 provider shall not be required to include any
11 additional information described in subpara-
12 graph (A) in a report under subsection (b)(1).

13 “(d) FORWARDING OF REPORT TO LAW ENFORCE-
14 MENT.—

15 “(1) IN GENERAL.—The National Center for
16 Missing and Exploited Children shall forward each
17 report made under subsection (b)(1) to any appro-
18 priate law enforcement agency designated by the At-
19 torney General under subsection (e)(2).

20 “(2) STATE AND LOCAL LAW ENFORCEMENT.—

21 The National Center for Missing and Exploited Chil-
22 dren may forward any report made under subsection
23 (b)(1) to an appropriate official of a State or polit-
24 ical subdivision of a State for the purpose of enforc-
25 ing State criminal law.

1 “(3) FOREIGN LAW ENFORCEMENT.—The Na-
 2 tional Center for Missing and Exploited Children
 3 may forward any report made under subsection
 4 (b)(1) to any appropriate foreign law enforcement
 5 agency designated by the Attorney General under
 6 subsection (e)(3), subject to the conditions estab-
 7 lished by the Attorney General under subsection
 8 (e)(3).

9 “(e) ATTORNEY GENERAL RESPONSIBILITIES.—

10 “(1) IN GENERAL.—The Attorney General shall
 11 enforce this section.

12 “(2) DESIGNATION OF FEDERAL AGENCIES.—
 13 The Attorney General shall designate promptly the
 14 Federal law enforcement agency or agencies to
 15 which a report shall be forwarded under subsection
 16 (d)(1).

17 “(3) DESIGNATION OF FOREIGN AGENCIES.—
 18 The Attorney General shall promptly—

19 “(A) designate the foreign law enforcement
 20 agencies to which a report may be forwarded
 21 under subsection (d)(3); and

22 “(B) establish the conditions under which
 23 such a report may be forwarded to such agen-
 24 cies.

25 “(f) FAILURE TO REPORT.—

1 “(1) KNOWING AND WILLFUL FAILURE.—An
2 online service provider that knowingly and willfully
3 fails to make a report required under subsection
4 (b)(1) shall be fined—

5 “(A) in the case of an initial knowing and
6 willful failure to make a report, not more than
7 \$150,000; and

8 “(B) in the case of any second or subse-
9 quent knowing and willful failure to make a re-
10 port, not more than \$300,000.

11 “(2) NEGLIGENCE FAILURE.—An online service
12 provider that negligently fails to make a report re-
13 quired under subsection (b)(1) shall be subject to a
14 civil penalty of—

15 “(A) in the case of an initial negligent fail-
16 ure to make a report, not more than \$50,000;
17 and

18 “(B) in the case of any second or subse-
19 quent negligent failure to make a report, not
20 more than \$100,000.

21 “(g) PROTECTION OF PRIVACY.—Nothing in this sec-
22 tion shall be construed to require an online service pro-
23 vider to—

24 “(1) monitor any user, subscriber, or customer
25 of that provider;

1 “(2) the content of any communication of any
2 person described in paragraph (1); or

3 “(3) affirmatively seek facts or circumstances
4 described in subsection (b)(2).

5 “(h) CONDITIONS OF DISCLOSURE OF INFORMATION
6 CONTAINED WITHIN REPORT.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), a law enforcement agency that receives a
9 report under subsection (d) shall not disclose any in-
10 formation contained in that report.

11 “(2) PERMITTED DISCLOSURES.—A law en-
12 forcement agency may disclose information in a re-
13 port received under subsection (d)—

14 “(A) to an attorney for the government for
15 use in the performance of the official duties of
16 that attorney;

17 “(B) to such officers and employees of that
18 law enforcement agency, as may be necessary in
19 the performance of their investigative and rec-
20 ordkeeping functions;

21 “(C) to such other government personnel
22 (including personnel of a State or subdivision of
23 a State) as are determined to be necessary by
24 an attorney for the government to assist the at-
25 torney in the performance of the official duties

1 of the attorney in enforcing Federal criminal
2 law; or

3 “(D) if the report discloses a violation of
4 State criminal law, to an appropriate official of
5 a State or subdivision of a State for the pur-
6 pose of enforcing such State law.

7 “(i) EVIDENCE PRESERVATION.—

8 “(1) IN GENERAL.—An online service provider
9 shall store any image and other information relating
10 to the facts or circumstances of any incident re-
11 ported under subsection (b)(1) for not less than 180
12 days after the date that the report is transmitted to
13 the National Center for Missing and Exploited Chil-
14 dren through the CyberTipline, or for such longer
15 period of time as may be requested by the National
16 Center for Missing and Exploited Children or a law
17 enforcement agency.

18 “(2) DESTRUCTION OF EVIDENCE.—An online
19 service provider shall not destroy any data that, to
20 the online service provider’s knowledge, relates to an
21 incident reported under subsection (b)(1) during the
22 180-day period beginning on the date that report is
23 transmitted to the National Center for Missing and
24 Exploited Children through the CyberTipline, or for
25 such longer period of time as may be requested by

1 the National Center for Missing and Exploited Chil-
2 dren or a law enforcement agency.

3 **“§ 2257B. Use of images to combat child pornography**

4 “(a) IN GENERAL.—The National Center for Missing
5 and Exploited Children is authorized to provide elements
6 of any image it receives through its CyberTipline to an
7 online service provider for the sole and exclusive purpose
8 of permitting that online service provider to stop the fur-
9 ther transmission of that image. Such elements may in-
10 clude unique identification numbers generated from the
11 data contained in the image file and other technology that
12 serves to identify and stop the transmission of child por-
13 nography.

14 “(b) USE BY ONLINE SERVICE PROVIDERS.—Any
15 online service provider that receives an image element
16 from the National Center for Missing and Exploited Chil-
17 dren under this section may use such element only for the
18 purposes described in this section, provided that such use
19 shall not relieve the online service provider from its report-
20 ing obligations under section 2257A.

21 **“§ 2257C. Limitations on liability**

22 “(a) NATIONAL CENTER FOR MISSING AND EX-
23 PLOITED CHILDREN.—

24 “(1) IN GENERAL.—Except as provided in para-
25 graphs (2) and (3), a civil claim or criminal charge

1 against the National Center for Missing and Ex-
 2 ploited Children, including any director, officer, em-
 3 ployee, or agent of such center, arising from the per-
 4 formance of the CyberTipline responsibilities or
 5 functions of such center, as described in this section,
 6 section 2257A or 2257B of this title, or section 404
 7 of the Missing Children’s Assistance Act (42 U.S.C.
 8 5773), or from the effort of such center to identify
 9 child victims may not be brought in any Federal or
 10 State court.

11 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
 12 CONDUCT.—Paragraph (1) shall not apply to a claim
 13 or charge if the National Center for Missing and Ex-
 14 ploited Children, or a director, officer, employee, or
 15 agent of such center—

16 “(A) engaged in intentional misconduct; or

17 “(B) acted, or failed to act—

18 “(i) with actual malice;

19 “(ii) with reckless disregard to a sub-
 20 stantial risk of causing injury without legal
 21 justification; or

22 “(iii) for a purpose unrelated to the
 23 performance of any responsibility or func-
 24 tion under this section, section 2257A or
 25 2257B of this title, or section 404 of the

1 Missing Children's Assistance Act (42
2 U.S.C. 5773).

3 “(3) ORDINARY BUSINESS ACTIVITIES.—Para-
4 graph (1) shall not apply to an act or omission relat-
5 ing to an ordinary business activity, including gen-
6 eral administration or operations, the use of motor
7 vehicles, or personnel management.

8 “(b) ONLINE SERVICE PROVIDERS.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graphs (2) and (3), a civil claim or criminal charge
11 against an online service provider, including any di-
12 rector, officer, employee, or agent of such online
13 service provider, arising from the performance of the
14 reporting responsibilities of such online service pro-
15 vider under this section, section 2257A, or section
16 2257B may not be brought in any Federal or State
17 court.

18 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
19 CONDUCT.—Paragraph (1) shall not apply to a claim
20 if the online service provider, or a director, officer,
21 employee, or agent of that online service provider—

22 “(A) engaged in intentional misconduct; or

23 “(B) acted, or failed to act—

24 “(i) with actual malice;

1 “(ii) with reckless disregard to a sub-
 2 stantial risk of causing injury without legal
 3 justification; or

4 “(iii) for a purpose unrelated to the
 5 performance of any responsibility or func-
 6 tion under this section, section 2257A, or
 7 section 2257B.

8 “(3) ORDINARY BUSINESS ACTIVITIES.—Para-
 9 graph (1) shall not apply to an act or omission relat-
 10 ing to an ordinary business activity of an online
 11 service provider, including general administration or
 12 operations, the use of motor vehicles, or personnel
 13 management.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) REPEAL OF SUPERCEDED PROVISION.—Sec-
 16 tion 227 of the Crime Control Act of 1990 (42
 17 U.S.C. 13032) is repealed.

18 (2) TABLE OF SECTIONS.—The table of sections
 19 for chapter 110 of title 18, United States Code, is
 20 amended by inserting after the item relating to sec-
 21 tion 2257 the following:

“2257A. Obligation to report child pornography by online service providers.

“2257B. Use of images to combat child pornography.

“2257C. Limitations on liability.”.

1 **SEC. 3. ENCOURAGING FOREIGN COUNTRIES TO COMBAT**
2 **CHILD PORNOGRAPHY AND CHILD EXPLOI-**
3 **TATION.**

4 The United States Trade Representative, the Attor-
5 ney General of the United States, and the head of any
6 other relevant Federal agency shall take appropriate ac-
7 tion to encourage foreign governments to—

8 (1) stop the production and transmission of
9 child pornography in the country of such govern-
10 ment; and

11 (2) cooperate with law enforcement agencies in
12 the United States, including Federal agencies and
13 Internet Crimes Against Children Task Forces, to
14 combat the creation and transmission of child por-
15 nography.

16 **SEC. 4. AUTHORIZATION OF FUNDS TO COMBAT CHILD**
17 **PORNOGRAPHY.**

18 There are authorized to be appropriated to the Attor-
19 ney General \$20,375,000 for grants to Internet Crimes
20 Against Children Task Force.

21 **SEC. 5. REGISTRATION OF ONLINE IDENTIFIERS OF SEX**
22 **OFFENDERS.**

23 (a) IN GENERAL.—Section 114(a) of the Sex Of-
24 fender Registration and Notification Act (42 U.S.C.
25 16914(a)) is amended—

1 (1) by redesignating paragraph (7) as para-
2 graph (8); and

3 (2) by inserting after paragraph (6) the fol-
4 lowing:

5 “(7) Any e-mail address, instant message ad-
6 dress, or other similar Internet identifier used by the
7 sex offender to communicate over the Internet.”.

8 (b) UPDATING OF INFORMATION.—Section 113(c) of
9 the Sex Offender Registration and Notification Act (42
10 U.S.C. 16913(c)) is amended by inserting “e-mail address,
11 instant message address, or other similar Internet identi-
12 fier used by the sex offender to communicate over the
13 Internet,” before “or student status”.

14 (c) FAILURE TO REGISTER ONLINE IDENTIFIERS.—
15 Section 2250 of title 18, United States Code, is amend-
16 ed—

17 (1) in subsection (b), by inserting “or (d)” after
18 “subsection (a)”; and

19 (2) by adding at the end the following:

20 “(d) FAILURE TO REGISTER ONLINE IDENTI-
21 FIERS.—

22 “(1) IN GENERAL.—It shall be unlawful for any
23 person who is required to register under the Sex Of-
24 fender Registration and Notification Act (42 U.S.C.
25 16901 et seq.) to fail to provide an e-mail address,

1 instant message address, or other similar Internet
 2 identifier used by that person to communicate over
 3 the Internet to the appropriate official for inclusion
 4 in the sex offender registry, as required under that
 5 Act.

6 “(2) PENALTY.—Any person who violates para-
 7 graph (1) shall be fined under this title, imprisoned
 8 not more than 10 years, or both.”.

9 **SEC. 6. USE OF THE INTERNET AS AN AGGRAVATING FAC-**
 10 **TOR.**

11 (a) IN GENERAL.—Chapter 110 of title 18, United
 12 States Code, is amended by adding at the end the fol-
 13 lowing:

14 **“§ 2260B. Use of the Internet as an aggravating factor**

15 “(a) IN GENERAL.—It shall be unlawful for any per-
 16 son to—

17 “(1) commit a violation of section 1466A, 1470,
 18 2251, 2251A, 2252, 2252A, 2252B, or 2260 that
 19 does not require, as an element of such violation, the
 20 use of the Internet; and

21 “(2) use the Internet to commit the violation
 22 described in paragraph (1).

23 “(b) PENALTY.—

24 “(1) IN GENERAL.—Any person who violates
 25 subsection (a) shall be imprisoned for 10 years.

1 “(2) CONSECUTIVE SENTENCE.—A term of im-
 2 prisonment imposed under this section shall be con-
 3 secutive to the sentence of imprisonment for any
 4 other offense.”.

5 (b) TABLE OF SECTIONS.—The table of sections for
 6 chapter 110 of title 18, United States Code, is amended
 7 by adding at the end the following:

 “2260B. Use of the Internet as an aggravating factor.”.

8 **SEC. 7. REMOVAL OF OFFENDERS FROM SOCIAL NET-**
 9 **WORKING SITES.**

10 Any online service provider (as that term is defined
 11 in section 2257A of title 18, United States Code, as added
 12 by this Act) that is a social networking site shall imple-
 13 ment effective measures to remove any web page hosted
 14 by that provider that is associated with any identifier list-
 15 ed in section 114(a) of the Sex Offender Registration and
 16 Notification Act (42 U.S.C. 16914(a)), as amended by this
 17 Act.

○